

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|   |   |                                |
|---|---|--------------------------------|
| <b>JAMES PLONSKER,</b>                            | ) |                                |
|   | ) |                                |
| <b>Plaintiff,</b>                                 | ) |                                |
|   | ) |                                |
| <b>v.</b>   | ) | <b>Case No. 08CV4033</b>       |
|   | ) |                                |
| <b>NATIONAL ASSET RECOVERY<br/>SERVICES, INC.</b> | ) | <b>Judge Marvin E. Aspen</b>   |
|   | ) |                                |
| <b>Defendant.</b>                                 | ) | <b>Magistrate Judge Ashman</b> |

**COUNTERCLAIM**

Defendant/Counterclaimant, National Asset Recovery Services, Inc., through its undersigned counsel, for its Counterclaim against Plaintiff/Counterdefendant James Plonsker ("Plonsker") states as follows:

**PARTIES**

1. Counterclaimant, National Asset Recovery Services, Inc. ("NARS"), is a Missouri corporation duly registered to conduct business in the State of Illinois including, Cook County, Illinois.
2. Counterdefendant, Plonsker, is an Illinois resident and a former employee of NARS.

**JURISDICTION**

3. The Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. §1367 insofar as the claims asserted herein are related to the claims asserted by Plonsker, over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332.

UNJUST ENRICHMENT

4. Plonsker was employed by NARS in a sales capacity from October 10, 2005 until May 1, 2008, at which time his employment was terminated by NARS.

5. During the course of Plonsker's employment with NARS, Plonsker was compensated, in part, via payment of commissions.

6. During his employment, Plonsker was paid commissions on the 15<sup>th</sup> day of each month on certain sales revenues received during the prior calendar month.

7. On or about May 19, 2008, following his termination from employment by NARS, Plonsker filed a lawsuit against NARS in the Circuit Court of Cook County, Illinois, Cause No. 08CH18254, which action was subsequently removed to this Court and is now pending in this Court under Case No. 08CV3305, (hereinafter referred to as the "Initial Lawsuit").

8. In the Initial Lawsuit, Plonsker alleges that he was not paid commissions by NARS subsequent to his termination from NARS and that NARS' failure to pay such commissions is in violation of § 407.912 of the Missouri Revised Statutes.

9. Although NARS denies owing Plonsker commissions on revenues received subsequent to Plonsker's termination from employment, NARS has paid Plonsker, under protest, Thirty-Nine Thousand Five Hundred Forty Dollars (\$39,540.00) in commissions for certain revenues received in May, 2008.

10. At the time the payment for May, 2008 revenues was submitted to Plonsker, Plonsker was advised that the payment was being made in protest out of an abundance of caution and solely because of the currently unsettled state of the law under R.S.Mo. § 407.911 *et seq.*

11. At the time the payment for May, 2008 revenues was submitted to Plonsker, NARS also advised Plonsker that the sums were being paid to Plonsker with complete reservation of all rights to retain recovery of the sums paid.

12. Plonsker was not entitled to payment of commission on any revenues received by NARS following the date of Plonsker's separation from employment with NARS.

13. NARS never agreed via contract or policy to pay Plonsker commissions on revenues received after Plonsker's separation from employment with NARS.

14. As a result of NARS' payment to Plonsker in the amount of Thirty-Nine Thousand Five Hundred Forty Dollars (\$39,540.00) for commissions to which Plonsker was not entitled, Plonsker has been unjustly enriched in the amount of Thirty-Nine Thousand Five Hundred Forty Dollars (\$39,540.00) at NARS' expense.

15. As a result of the unjust enrichment of Plaintiff, NARS has been damaged in the amount of Thirty-Nine Thousand Five Hundred Forty Dollars (\$39,540.00).

WHEREFORE, NARS hereby prays for judgment over and against Plaintiff in the amount of Thirty-Nine Thousand Five Hundred Forty Dollars (\$39,540.00) and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Defendant, NATIONAL ASSET  
RECOVERY SERVICES, INC.

By: /s/ Donald J. Vogel  
One of its Attorneys

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Attorneys for Defendant National Asset Recovery  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 30th day of July, 2008 served a true and correct copy of the foregoing through the electronic case filing system of the United States District Court for the Northern District of Illinois to the following counsel:

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and via First Class U.S. Mail to:

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/s/Donald J. Vogel